

APR 15 2011

Part of
Public Record

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

M & G POLYMERS USA, LLC

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. NOR 42123

229286

**M&G POLYMERS USA, LLC'S
WITHDRAWAL OF OPPOSITION TO BIFURCATION REQUEST AND
MOTION TO MODIFY PROCEDURAL SCHEDULE**

M & G Polymers USA, LLC ("M&G") hereby withdraws its opposition to the bifurcation request included in the "Motion for Expedited Determination of Jurisdiction Over Challenged Rates" ("Bifurcation Motion") filed by CSX Transportation, Inc. ("CSXT") on January 27, 2011 in this proceeding. As described more fully below, in light of a recent Board decision, M&G requests that the Surface Transportation Board ("Board") decide the market dominance portion of this proceeding before rate reasonableness, and do so according to the procedural schedule set forth in this "Procedural Motion."

M&G requests expedited consideration of this Procedural Motion in order to minimize the consequences of bifurcation to M&G. Unless and until the Board grants this Motion, M&G is continuing to expend a significant amount of time and money developing both its stand-alone cost ("SAC") and market dominance Opening Evidence, which is due on June 29, 2011. An expedited determination would ensure that M&G does not unnecessarily expend time and effort

on SAC evidence that ultimately could be wasted.¹ Furthermore, the sooner the Board decides this Procedural Motion, the shorter the delay that will be caused by a bifurcated procedural schedule. M&G's request for expedited determination also is consistent with CSXT's request for expedited determination of its "Bifurcation Motion." **Therefore, M&G requests that CSXT file its reply by Wednesday, April 20, 2011, and that the Board issue an expedited decision promptly thereafter.**

In its Bifurcation Motion, CSXT asked the Board "to consider the parties' market dominance evidence – and determine whether the Board has jurisdiction – before the parties submit SAC evidence." Bifurcation Motion at 3. Although M&G initially opposed CSXT's bifurcation request in a Reply filed on February 18, 2011, M&G withdraws its objections based upon the Board's recent decision in Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., STB Docket No. 42121 (served April 5, 2011) ("TPI v. CSXT"). In light of that decision, M&G now believes that its best interest lies in an expedited bifurcated proceeding, which would not be served by waiting for the Board to decide CSXT's Bifurcation Motion.²

As noted above, the Board recently found that bifurcation is appropriate in TPI v. CSXT. That case and M&G's case both involve SAC challenges to rail rates in dozens of lanes, and require the parties to design stand-alone railroads of unprecedented size and scope. In its bifurcation decision in TPI v. CSXT, the Board "conclude[d] bifurcation to be warranted" and held the rate reasonableness phase in abeyance pending further order of the Board. See TPI v. CSXT, slip op. at 7 (served April 5, 2011). M&G asks the Board to make the same finding in

¹ M&G is highly sensitive to the fact that the Board issued its decision on a similar motion to bifurcate filed by CSXT in Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., STB Docket No. 42121 just three weeks before Opening Evidence was due in that case, and seeks to avoid the financial consequences of a similar last minute decision in this proceeding.

² While agreeing to bifurcation of this proceeding, M&G continues to dispute the market dominance assertions made in CSXT's Motion.

this case, and to establish a market dominance procedural schedule just as the Board did in TPI v. CSXT.

The market dominance procedural schedule adopted by the Board in TPI v. CSXT established three rounds of evidence, with one month separating the three filing dates. M&G sees no reason to deviate from this schedule. Consequently, M&G requests that the Board adopt the following procedural schedule for submission of market dominance evidence:

M&G opening evidence on market dominance	June 6, 2011
CSXT reply evidence on market dominance	July 5, 2011
M&G rebuttal evidence on market dominance	August 2, 2011

This schedule allows at least four weeks between each round of evidence, and closely mirrors the schedule established by the Board in TPI v. CSXT, where the three filing dates are May 5, June 6, and July 5.

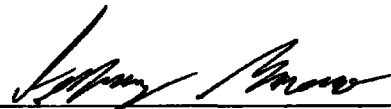
As the Board knows, M&G's counsel also represents TPI, and CSXT is represented by the same counsel in both cases. Consequently, coordination of the market dominance procedural schedules in both cases ensures that the parties' counsel do not have conflicting or overlapping due dates. Not only does the proposed schedule follow the TPI v. CSXT precedent, but it also is a slightly expanded version of the market dominance procedural schedule proposed by CSXT itself in its Bifurcation Motion. Bifurcation Motion at 4.

M&G desires to see this case through to its conclusion as efficiently and expeditiously as possible. In light of the Board's recent decision in TPI v. CSXT, bifurcation and adoption of the procedural schedule proposed herein removes a substantial amount of uncertainty sooner and

allows this case to progress in as fair, efficient and expedited a manner as a bifurcated schedule will permit.

Given that both M&G and CSXT now agree that bifurcation should occur, and given that the proposed procedural schedule closely tracks that recently adopted in TPI v. CSXT, M&G asks that the Board direct CSXT to respond to this motion by April 20, 2011 and that the Board rule on this request in an expedited manner, as soon as possible. A quick Board decision will allow M&G to defer preparation of SAC evidence and conserve limited litigation resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno", is written over a horizontal line.

Jeffrey O. Moreno
David A. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
(202) 331-8800

April 15, 2011

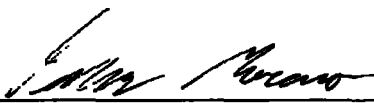
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of April 2011 the foregoing has been served upon the following persons via the means described below:

via electronic mail and first class mail to:

G. Paul Moates
Paul A Hemmersbaugh
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Counsel for CSX Transportation, Inc.



Jeffrey O. Moreno